

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

MATTHEW OLIVER REARDON

PLAINTIFF

v.

CIVIL ACTION No.: 3:22-cv-00050-SA-JMV

**THE STATE OF MISSISSIPPI;
LAFAYETTE COUNTY, MISSISSIPPI;
LAFAYETTE COUNTY CHANCERY COURT;
COMMUNICARE;
MISSISSIPPI DEPARTMENT OF MENTAL HEALTH;
LAFAYETTE COUNTY SHERIFF'S DEPARTMENT;
JOSEPH B. EAST;
DR. SANDY ROGERS;
RACHEL ALCORN;
SUSAN BEARD;
SHERRY WALL;
JEFF BUSBY;
DAVID O'DONNELL**

DEFENDANTS

MOTION TO DISMISS

COMES NOW, the Mississippi Department of Mental Health ("Department") and files this, its Motion to Dismiss all claims made against it, pursuant to Federal Rule of Civil Procedure 12. The Department would show unto the Court, the following:

Federal Law Claims

1. The Plaintiff in his First Amended Complaint [Doc. 30] named the Mississippi Department of Mental Health as defendant and served process through the Mississippi Attorney General's Office.

2. The Department has not consented to this lawsuit or to this Court's jurisdiction nor has the Department, as an arm of the State, waived its sovereign immunity in this Court.

3. The Department, as an arm of the State, thus enjoys Eleventh Amendment immunity from suit, except under narrow circumstances.

4. This Court should therefore dismiss the Plaintiff's alleged violations of federal law brought under 42 United States Code Sections 1983, 1985, and 1986, as this Court lacks jurisdiction, the Department is not considered a "person" as contemplated by the sections, and none of the narrow circumstances such as the *Ex parte Young* exception or abrogation apply here.

5. This Court should dismiss the Plaintiff's alleged violation of federal law brought under 18 United States Code Section 242, as that relief is unavailable to private citizens in civil lawsuits.

6. Likewise, this Court should dismiss the Plaintiff's alleged violation of the False Claims Act, 31 United States Code Sections 3729 *et seq.*, as the Plaintiff provides no factual allegations having any relation to the Act and there is a clear misapprehension of what constitutes a "false claim" under the Act.

7. Finally, another basis to dismiss all the Plaintiff's claims arising under federal law as he fails to state any claim or allege any facts against the Department, on which this Court could grant relief.

8. As such, and for all the reasons set forth in the corresponding Memorandum of Law supporting this Motion, this Court should dismiss all the Plaintiff's claims arising under federal law.

State Law Claims

9. For the Plaintiff's alleged tort-based or state-law-based claims against the Department, the Mississippi Tort Claims Act ("MTCA") governs those claims.

10. Under the MTCA, the State of Mississippi expressly preserved its Eleventh Amendment immunity for tort-based or state-law-based claims brought in this Court. Thus, the Department, as an arm of the State, is immune from suit in this Court for those claims.

11. Further, the Plaintiff failed to adhere to the notice and procedural requirements mandated by the MTCA.

12. As such, and for all the reasons set forth in the corresponding Memorandum of Law supporting this Motion, this Court should dismiss all the Plaintiff's claims arising under state law.

WHEREFORE, PREMISES CONSIDERED, the Department respectfully requests this Court dismiss all claims made against it here with prejudice, where proper. The Department also requests any other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED, this the 20th day of October, 2022.

THE MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

BY: LYNN FITCH, ATTORNEY GENERAL
FOR THE STATE OF MISSISSIPPI

/s/ Drew D. Guyton

BY: DREW D. GUYTON, MS Bar No. 104451
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CERTIFICATE OF SERVICE

I, Drew D. Guyton, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I electronically filed the foregoing document with the Clerk of this Court using the Court's electronic filing system, which transmitted a copy to all counsel of record.

Further, I certify I have physically mailed – via USPS Certified Mail, postage prepaid, with a return receipt requested – a true and correct copy of the foregoing document in the above-styled and numbered cause to the following party/counsel:

Matthew Reardon
117 CR 401
Oxford, Mississippi 38655

Pro se Plaintiff

This the 20th day of October, 2022.

/s/ Drew D. Guyton
Drew D. Guyton